IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.640 OF 1997
IN
WRIT PETITION NO.502 OF 1997

1. Sarva Shramik Sangh,
"Shramik", Lokmanya Tilak
Vasahat, Naigaon,
Mumbai-400 014.

2. Shri Maruti Ishwara Nalavade,
Chawl No.6210/12, Gandhinagar
Rahiwasi Sangh, Dr.E.Moses Road,
Worli, Mumbai-400 018.

3. Shrihari Rajanna Chilkha,
Chawl No.10/23, Bharat Nagar,
D.C.Road, Worli, Mumbai-400 018.

4. Shri Narayan Pullayya Shripati,
Room No.M 604, Mariamma Nagar,
Nehru Science Central Bridge,
Dr.Annie Besant Road, Worli,
Mumbai - 400 018.

5. Shri Anant Sadashiv Agacherak,
5/32, Manaji Rajuji Chawl,
Sitaram Jadhav Marg, Lower Parel,
Mumbai - 400 013.

6. Shri Shankar Vishnu Kothawale,
Haribag Chawl, Room No.28,
Sitaram Jadhav Marg,
Lower Parel, Mumbai -400 013. .. Appellants
(Orig. Petitioners)

v/s.

1. Kamala Mills,
Senapati Bapat Marg,
Lower Parel, Mumbai-400 013.

2. The Presiding Officer,
3rd Labour Court,
Mumbai-400 034. .. Respondents
(Orig.Respondents)

Mr.P.M.Patel for the appellants.

Mr.S.K.Talsania, Senior Counsel i/by M/s.Kanga & Co. for the respondent No.1.

CORAM : R.M.LODHA AND D.G.KARNIK, JJ.

DATED : 22nd December, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

This appeal is directed against the order dated 7th April, 1997 whereby the learned Single Judge rejected the writ petition in limine.

2. The controversy arises, in the circumstances, which we briefly advert first.

3. Kamala Mills-respondent No.1 is the textile industry and covered under the provisions of the Bombay Industrial Relations Act, 1946 (for short "Act of 1946"). There was a strike in the textile industry including Kamala Mills in the year 1982. As a result thereof, the services of the present appellants and the employees named in Exhibit "A" who were employed in the Art Silk Section of Kamala Mills were terminated. The termination of these employees resulted into reference under the Act of 1946. During the pendency of the said reference, Sick Industrial Companies (Special Provisions) Act, 1985 (for short "Act of 1985") came into force and thereunder Board for Industrial and Financial Reconstruction (BIFR) was constituted. As Kamala Mills was a sick company, the reference with regard to the said company was registered with the BIFR. During the pendency of the proceedings before the BIFR, Rashtriya Mill

Mazdoor Sangh (RMMS) entered into the memorandum of understanding on 21st October, 1992 with Kamala Mills. In the said settlement, the provision made in para 3 thereof was also made applicable to the workers of the Art Silk Department in respect of whom the cases were pending in the court. Pursuant to the said settlement, the appellants and the other employees as set out in Exhibit "A" were given benefit of gratuity as per clause 3 but were not given any retrenchment compensation. These employees were also not given bonus for the year 1981 and salary for the seventeen days in the month of January, 1982. Constrained thereby, the aggrieved employees, all 43 in number, made application under section 33C(2) of the Industrial Disputes Act, 1947 for the recovery of the due amount before the Labour Court. The said application was contested by the employer-Kamala Mills. The claimants in support of their case filed an affidavit of Maruti Ishwara Nalavade. He was not cross-examined by the employer. On behalf of the employer, Narayan Babaji Samari was examined. The Third Labour Court, Mumbai after hearing the parties by the order dated 23.9.1996, rejected the application made under section 33C(2). The employees preferred writ petition which also came to be dismissed by the learned Single Judge by order dated 7th April, 1997 and hence the appeal.

4. It is not in dispute that at the time the settlement was arrived at between RMMS and Kamala Mills on 21st October, 1992, the services of the concerned employees in the Art Silk Department stood terminated long back and the said employees were not in the employment at that time. It is also an admitted position that at the time of settlement dated 21st October, 1992, Kamala Mills was a sick company and with regard to that, reference was pending before the BIFR. Perusal of the settlement dated 21st October, 1992 would show that the settlement was arrived at with a view to enable the company to restart the mill confining only to 25000 spindles in the Spinning Department and the processing department and the number of posts that were to be retained were for operation of 25000 spindles and the processing department. Accordingly, 663 posts together with an appropriate complement of badlis i.e., 20% to operate the spinning and processing sections of the company together with the associate departments namely mixing, blow room, carding, combing, speed frame, ring, spinning, winding and general engineering were retained and 884 posts were to stand abolished by paying the appropriate statutory dues namely gratuity and retrenchment compensation to such of the employees who were qualified to such benefits. The relevant clause upon which the entire debate centered around is clause No.3 of the settlement that reads thus-

> "3. The rest of the posts aggregating to 884 will stand abolished by paying the appropriate statutory dues namely gratuity and retrenchment compensation to such of the workmen who qualify for such benefits. The gratuity and retrenchment compensation shall be calculated on the basis of wages comprising basic wage and dearness allowance as were drawn by the concerned workmen as on the date of the closure of the mills. However, in the computation of the length of service of the employees, the period commencing from the date of the closure of the mill to the date of this Memorandum of Understanding shall be included. This will also apply to workers of the Art Silk Department whose cases are pending in the court."

5. A close scrutiny of the aforesaid clause would reveal that in so far as applicability of this clause to the workers of the Art Silk Department whose cases were pending in the court was concerned, was only to the extent of computation of the length of service of these employees from the date of the closure of the mills to the date of memorandum of understanding for the purposes of gratuity. The question of retrenchment compensation to the erstwhile workers of the Art Silk Department did not arise as their services stood terminated long back in the year 1982 itself. It is true that the employees who were erstwhile working in the Art Silk Department and whose services came to be terminated in the month of January, 1982 were asked to tender resignation letters before payment of benefit of gratuity as provided in clause 3 but it was so done out of abandoned caution by the employer. On fair reading

of that clause, we find it unable to accept the submission of the learned counsel for the appellant that the workers working in the Art Silk Department whose cases were pending in the court were also entitled to retrenchment compensation. The retrenchment compensation was payable to the workers working on 884 posts which stood abolished by virtue of the settlement and not the employees who were not in employment and whose services had already come to an end long back. We, therefore, find no infirmity in the view of the Labour Court that these workers were not entitled to retrenchment compensation.

6. As regards the workers' claim of bonus for the year 1981 in the sum of Rs.1000/- and salary for 17 days in the month of January, 1982 amounting to Rs.600/-; Mr.S.K.Talsania, the learned senior counsel for the employer could not justify the denial of these claims. Narayan Babaji Samari, the only witness produced by the employer, has not stated a word refuting the claim of the bonus for the year 1981 and salary for 17 days in the month of January, 1982 as claimed. To that extent, the Labour Court committed serious error in not granting relief to the concerned workers and the learned Single Judge erred in maintaining the order of the Labour Court.

7. In the result, we allow the appeal in part.

The order of the Labour Court rejecting the claim of retrenchment compensation and upheld by the learned Single Judge is maintained. However, as regards denial of the bonus for the year 1981 and salary for the 17 days in the month of January, 1982, is set aside. It is declared that the appellant Nos.2 to 6 and the employees listed in Exhibit "A" annexed to the writ petition who were working in Art Silk Department are entitled to a sum of Rs.1000/- towards bonus for the year 1981 and further sum of Rs.600/- towards salary of 17 days in the month of January. We direct the respondent No.1-Kamala Mills to compute the due amount accordingly and make consolidated payment to the appellant No.1 Sarva Shramik Sangh within four weeks from today. The appellant No.1-Sarva Shramik Sangh shall disburse the due amount to all the concerned workers accordingly.

No costs.

(R.M. LODHA, J.)

(D.G. KARNIK, J.)